

team felt that the education impact of [redacted] combined with deficits of 2-3 standard deviations below the mean in both cognitive and adaptive functioning adversely affects Petitioner's [name deleted] performance in the educational environment. Therefore, the team determined that Petitioner [name deleted] continues to be eligible for special education services under the category of [redacted] ([redacted])¹⁰. Petitioner's

mother disagreed with the eligibility determination and wrote "Disagreement w/ eligibility; it should be [redacted]"¹¹.

30. On the following day, December 21, 2005, the Special Education Director issued a Prior Written Notice to Petitioner's mother in which she indicated that the Team "has developed an IEP that is reasonably calculated to ensure a free, appropriate public education on Petitioner's [name deleted] specific needs" and "1. Eligibility: the team considered parent's request of eligibility in the area of [redacted] (sic)

¹⁰The same eligibility criteria adopted at the May 6, 2005 IEP meeting.

¹¹Towards the end of the meeting, Petitioner's mother left the meeting stating "I am out of here. You are not here for Petitioner [name deleted]! You have made so many misstatements of fact that .. You are not here for my son. You know you are not here for my son! You have lied to the Department of Ed. You are not here for my son and if you were you would have given him an IEP meeting. So you know what, I will see you at the hearing. I really resent you saying that you are here for my son. None of you are. (Petitioner's mother then accused the Special Education Director of being a liar and left the meeting).

but was rejected due to the combined effects of [REDACTED]
[REDACTED]

[REDACTED]. 2. IEP: the IEP team members were aware of the parents' request to have the student placed at private school placement [name deleted]. This option was rejected due to district's offered program being a better program and one calculated to meet his needs".

31. On January 3, 2006, the undersigned wrote to Petitioner's mother, asking her to "specify, in writing, each and every deficiency that she believes exists in the IEP together with her written proposals of what would be necessary in the IEP to make the IEP appropriate".

32. On January 16, 2006, the undersigned received Petitioner's mother's reply. Based on that reply, the undersigned sent a letter to the parties indicating that the only objection raised by Petitioner's mother [name deleted] "is to the eligibility classifications for which Petitioner [name deleted] is entitled to special education and on which the IEP was created". The parties were informed that "Accordingly, at the evidentiary hearing, the only issue for which evidence will be allowed is Petitioner's [name deleted] classification(s) for special education purposes. In the event I determine that Petitioner [name deleted] has been properly classified, I will enter an immediate Order that the IEP created on

December 20, 2005 meets all requirements for a free, appropriate public education. If I determine that Petitioner [name deleted] has not been properly classified, I will enter appropriate orders at that time".

33. On January 27, 2006, the evidentiary hearing into Petitioner's due process hearing request was convened^{12,13}. The hearing then resumed on February 7 and February 21, 2006¹⁴.

34. No evidence exists in the record of this matter to show that Petitioner does not suffer from cognitive impairments at least two to three standard deviations below the mean.

35. No written assessment or evaluation exists in the record of this matter to show that Petitioner functions in the normal range of intelligence.

¹²Petitioner's mother was informed both prior to and at the beginning of the hearing that she bears the burden of proving that the IEP being offered by the Respondent School District is inappropriate pursuant to the U.S. Supreme Court decision of Schaffer v. Weast. Nevertheless, to keep the evidence orderly, the undersigned required the Respondent School District to present on a *prima facie* basis, how the December 20, 2005 IEP was developed.

¹³Petitioner's mother sought to subpoena the Superintendent of Public Instruction, Thomas Horne, and Assistant Superintendent Joanne Phillips to testify at the hearing. No justification for their participation was provided by Petitioner's mother and Petitioner's mother was informed that the undersigned would not sign subpoenas requiring their attendance.

¹⁴Petitioner's mother left the hearing on February 21, 2006 while testimony was being taken. At the conclusion of the witness' testimony and the completion of the Respondent School District's *prima facie* case, the hearing was declared completed.

36. No evidence exists in the record of this matter to show that Petitioner does not suffer from adaptive impairments or that his rate of learning is not delayed.

37. No competent evidence exists in the record of this matter to show that any evaluation in the District's possession at the time the December 20, 2005 IEP was developed was influenced or biased by Petitioner's ~~disability~~ by any verbal content or by his ~~disability~~.

38. No competent evidence exists in the record of this matter to show that the Respondent School District failed to re-evaluate Petitioner's special education eligibility and/or his special education needs as required by law.

CONCLUSIONS OF LAW

1. As a parentally-placed private school student, being a student entitled to special education services, Petitioner is entitled to be offered an Individual Education Plan that provides for a free, appropriate public education within the least restrictive environment in the Respondent School District.

2. All due process rights to which Petitioner and his parents are

entitled have been provided.

3. All notice requirements to which Petitioner and his parents are entitled have been provided by the Respondent school district.

4. Pursuant to Arizona law, a student is classified as having multiple disabilities if that student has learning and developmental problems resulting from multiple disabilities as determined by evaluation..that cannot be provided for adequately in a program designed to meet the needs of children with less complex disabilities. Categorical eligibility for multiple disabilities requires two or more conditions. Based on Petitioner's evaluations since 1998, he has an [REDACTED] and [REDACTED] which qualifies him for categorical eligibility as a [REDACTED]

5. Pursuant to Arizona law, a special education student may be categorized for eligibility as specific learning disabled if the student's learning disorder is not a result of [REDACTED]. Because Petitioner has been diagnosed with [REDACTED], Respondent School District may not categorize Petitioner's eligibility for special education services as specific learning disabled.

6. Pursuant to Arizona law, a student may be categorized for eligibility as speech/language impaired if the student's impairment does

not call attention to itself or interferes with communication or causes a child to be maladjusted. Because Petitioner has been diagnosed with [REDACTED] wide variety of disabilities, the Respondent School District may not categorize Petitioner's eligibility for special education services as speech/language impairment.

7. Petitioner's diagnosis of [REDACTED] rules out his categorization for special education services in both the specific learning disabled category and the speech/language impairment category.

8. The IEPs developed by the Respondent School District on May 5, 2005 and December 20, 2005, each of which classifies Petitioner's eligibility for special education services as a [REDACTED] child due to [REDACTED] and [REDACTED] were proper categories in which to offer special education services to Petitioner.

9. No competent evidence exists in the record of this matter on which to conclude that any evaluation in the District's possession when it developed the eligibility categories for which Petitioner is entitled to special education services was skewed by his [REDACTED], or were compromised because of his diagnosis of [REDACTED] or by the evaluators administering the tests using verbal prompts.

10. The IEPs developed by the Respondent School District on May

5, 2005 and December 20, 2005, each of which properly categorize and classify Petitioner's entitlement to special education services on the basis of his [REDACTED] offer Petitioner a free, appropriate public education in the least restrictive environment.

11. No evidence exists in the record of this matter on which to conclude that Petitioner does not suffer from [REDACTED] [REDACTED] The absence of such evidence and the countervailing evidence showing [REDACTED] [REDACTED] therefore places him in the category of [REDACTED]

12. The record of this matter is devoid of any written assessment or evaluation showing that Petitioner functions in the range of normal intelligence.

13. No evidence exists in the record of this matter on which to conclude that Petitioner does not suffer from [REDACTED] or that his rate of learning is not delayed.

14. Respondent School District is the prevailing party in this action regarding the issue of whether it has offered an appropriate IEP to a parentally-placed private school student. Respondent School District is

the prevailing party in this action regarding all other claims filed by Petitioner's mother in the due process hearing requests.

15. No competent evidence has been presented in this hearing on which to conclude that the Respondent School District delayed the development of an IEP to offer to Petitioner such as to entitle Petitioner to any compensation or compensatory education from the Respondent School District.

16. No competent evidence exists in the record of this matter on which to conclude that the Respondent School District failed to re-evaluate Petitioner's special education eligibility and his special education needs. No evidence exists on which to conclude that the Respondent School District was required to complete a new, full evaluation for Petitioner or to ignore evaluation reports which have already been provided to the Respondent School District in determining Petitioner's eligibility categories for special education services in 2005.

HEARING OFFICER'S DECISION AND ORDERS

It is the decision of the undersigned hearing officer that Petitioner's due process hearing request for a declaration that the Respondent School

District has failed to offer a free, appropriate Individual Educational Plan (IEP) within the least restrictive environment for Petitioner's special education needs is DENIED.

It is the further decision of the undersigned hearing officer that the Respondent School District has offered an appropriate IEP for Petitioner's special education needs and that the Respondent School District has properly categorized Petitioner's disabilities in order to offer an appropriate IEP.

It is the further decision of the undersigned hearing officer that Petitioner has failed to prove that any delays in developing an appropriate IEP to be offered to Petitioner for the 2005-06 school year have been caused by the Respondent School District.

It is the further decision of the undersigned hearing officer that all other claims and complaints, of any type or nature, brought by Petitioner's mother as part of this due process hearing request are DENIED.

Since Petitioner is a parentally-placed private school student, Petitioner's mother bears the burden of proving that the Respondent School District has failed to offer to Petitioner an IEP that would comply

with the provisions of FAPE. Also, because Petitioner is a parentally-placed private school student, Part B of IDEA is inapplicable to him and the guidance document from OSEP, OSEP Memo 00-14 issued May 4, 2000, is the applicable Federal standard by which this due process hearing request is to be judged.

From the time he was [REDACTED] years old and until 2004, Petitioner was enrolled in the Respondent School District and he was receiving special education services from the Respondent School District under the eligibility categories of [REDACTED] and [REDACTED]. All of the evaluations performed since 1998 support those two eligibility categories and, until Petitioner's mother withdrew Petitioner from the Respondent School District, she always agreed with the two eligibility categories¹⁵.

For some reason¹⁶ after the 2003 evaluator [name deleted] found that Petitioner functioned at the [REDACTED] level, Petitioner's mother came to the conclusion that Petitioner is NOT [REDACTED].

¹⁵In her letter of December 8, 1998, Petitioner's mother insisted on the inclusion of [REDACTED] in Petitioner's eligibility classification.

¹⁶Since Petitioner's mother left the hearing without testifying about her actions or her state of mind, the undersigned cannot determine, without drawing inferences from the exhibits or comments made by Petitioner's mother at the due process hearing, why Petitioner's mother disowned all previous evaluation diagnostic findings showing [REDACTED].

[REDACTED] but instead, suffers from a variety of [REDACTED] together with [REDACTED] for which his entitlement to special education services should be re-classified and that his categorization as [REDACTED] should be removed.

The Respondent School District is constrained by Arizona statutes in deciding on eligibility criteria for special education services and the Respondent School District must comply with the definitions outlined in ARS, §15-761 when deciding whether any student is eligible to receive special education services.

Unquestionably, Petitioner falls within the definition of a child with a disability under ARS §15-761 (2) and he has consistently received services from the Respondent School District as a child with a disability. The issue in this due process hearing is determining whether, for IEP purposes, the Respondent School District properly categorized Petitioner's disabilities under the statute so as to offer an appropriate IEP to Petitioner. A review of the relevant statutory definitions is instructive:

ARS, §15-761 (15) defines a student with multiple disabilities as: "means learning and developmental problems resulting from multiple disabilities as

determined by evaluation...that cannot be provided for adequately in a program designed to meet the needs of children with less complex disabilities. Multiple disabilities include any of the following conditions that require the provision of special education and related services; (a) two or more of the following conditions (i) hearing impairment, (ii) orthopedic impairment, (iii) moderate mental retardation, (iv) visual impairment – OR, a child with a disability listed in subsection (a) existing concurrently with a condition of mild mental retardation, emotional disability or specific learning disability”.

ARS §15-761 (35) defines a specific learning disability as: “Means a specific learning disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write,

spell or do mathematical calculations; includes such conditions as perceptual disabilities, minimal brain dysfunction, dyslexia and aphasia; does not include learning problems which are primarily the result of visual, hearing, motor, or emotional disabilities, mental retardation or of environmental, cultural or economic disadvantage".

ARS §15-761 (36) defines a speech/language impairment as: "means a communication disorder such as stuttering, impaired articulation, severe disorders of syntax, semantics or vocabulary, or functional language skills, or a voice impairment, as determined by evaluation...to the extent that it calls attention to itself, interferes with communication or causes a child to be maladjusted".

ARS §15-761 (14) defines mild mental retardation as "means performance on standard measures of intellectual and adaptive behavior between two

and three standard deviations below the mean for children of the same age".

Within those statutory constraints, Petitioner has been ruled out for the category of § 17(2)(b) because of his diagnosis of § 17(2)(b) and the panoply of his diagnoses rules out the § 17(2)(b) as it cannot be said to call attention to itself (the overlays of § 17(2)(b) and § 17(2)(b) dominate in assessing Petitioner's § 17(2)(b). Likewise, the Respondent School District is not free to disregard 7 years of diagnostic findings of § 17(2)(b) simply because Petitioner's mother chooses to label Petitioner's disabilities in another form.

Petitioner's mother requested a complete re-evaluation of Petitioner in March 2005 and she believed¹⁷ that, because of her request, the Respondent School District was required to *completely* evaluate Petitioner without regard to prior evaluations and assessments¹⁸. As stated by the Respondent School District's psychologist [name deleted], the re-

¹⁷And still believes

¹⁸Petitioner's mother has presented no legal authority for that proposition and the undersigned believes that Petitioner's mother's request is untenable under IDEA and OSEP guidance.

evaluation process is one where prior evaluations are reviewed, the student's present levels of functioning are reviewed, areas are delineated which need additional assessment and, based on those criteria, the evaluation team decides whether the current information and evaluations are enough to qualify a student for special education services. If additional assessment is required, the team evaluates such additional assessment against the information it already has, it then determines the student's eligibility for special education services and it determines in which eligibility categories the student is entitled to receive special education services.

The undersigned believes that the evaluation team assembled to consider Petitioner's eligibility for special education services performed its obligations for re-evaluation within the scope of and in compliance with Arizona law, the IDEA and OSEP Memo 00-14. Because of Petitioner's prior enrollment in the Respondent School District, the evaluation team had all of the previous pediatric and psychological evaluations, all of

which showed that Petitioner is [redacted],¹⁹, ²⁰. Indeed, in October 2004, even after Petitioner's mother presented the results of Petitioner's participation in the Reading Clinic's program, the 2003 evaluator [name deleted] wrote "Petitioner [name deleted] is still functioning at a level well below his age and grade level. It is my recommendation that Petitioner [name deleted] requires direct, remedial instruction in basic skills: reading, writing, spelling, vocabulary and math".

Nonplused by the 2003 evaluator's conclusions, Petitioner's mother believed that the prior evaluations were tarnished because the evaluators had failed to exclude such factors as Petitioner's [redacted] as well as his [redacted] so that the evaluation results must have been skewed. As such, when the MET team met in April 2005, Petitioner's mother informed the Team that she was going to obtain a nonverbal cognitive evaluation which would factor out Petitioner's [redacted]

¹⁹The degree of [redacted] has been variously described as [redacted] and [redacted]. The Respondent School District has chosen to classify Petitioner as [redacted]

²⁰There is no question or dispute about Petitioner's [redacted] medical diagnosis in deciding his eligibility for special education services.

diagnosis and his [REDACTED].²¹

Instead of agreeing with Petitioner's mother's thesis, the 2005 evaluator [name deleted] concluded "Results indicated that Petitioner [name deleted] is capable of learning, however, the rate at which he learns is much slower than his typical peers" and she concluded that his "nonverbal cognitive abilities is within [REDACTED] of intellectual impairment".

One would think that Petitioner's mother would have accepted the 2005 evaluator's [name deleted] evaluation as proof that Petitioner's categorical eligibility for special education services included [REDACTED].²² Instead, Petitioner's mother insisted that additional evaluations would show that Petitioner is [REDACTED], not

²¹There is no evidence in the record about why Petitioner's mother did not deliver the evaluator's report of her May 10 evaluation to the Respondent School District until July 22, 2005.

²²The 2005 evaluator's report was delivered to the Respondent School District on July 22, 2005, in sufficient time to be considered before the August 5, 2005 IEP meeting, a meeting which Petitioner's mother indicated on August 2, 2005 that she would not attend.